

RESOLUTION NO. 2011-309

Adopted by the Sacramento City Council

May 31, 2011

REJECT BID, SUSPEND COMPETITIVE BIDDING AND AWARD CONTRACTS FOR PURCHASE OF REFUSE, RECYCLE, AND YARD (GREEN) WASTE CONTAINERS

BACKGROUND

- A. The City's current contract with Toter Incorporated for the purchase of refuse, recycle, and yard waste containers will expire on October 15, 2011. In order to ensure continuity of supply, the Solid Waste Division issued an Invitation for Bids (IFB) (B111711001) in February 2011.
- B. Six bids were received and all bids were found to be non-responsive for failing to meet certain specifications of the bid.
- C. Bids submitted by Cascade Engineering, IPL Inc., and Rehrig Pacific Company were deemed non-responsive because one or more of their size containers exceeded the maximum container volume (32, 64, and 96 gallons, plus or minus 1%) specified in the bid. The maximum volumes were specified because the volume directly relates to container sizes in the Council approved Solid Waste rate structure.
- D. Bids submitted by Otto Environmental Systems, LLC and Toter Incorporated were deemed non-responsive because their containers failed to meet the minimum wall thickness requirement specified in the bid. However, of the bids received, only Otto Environmental Systems, LLC and Toter Incorporated offered the container sizes the City described in the bid specifications and except for the wall thickness requirement, substantially meet the bid specifications.
- E. It is in the City's best interest to reject all bids, suspend further competitive bidding and enter into agreements with Otto Environmental Systems, LLC and Toter Incorporated for the purchase of refuse, recycling, and yard waste containers. Although Otto Environmental Systems, LLC and Toter Incorporated did not meet the wall thickness requirement, the alternative of using larger container sizes that do not match Council approved Solid Waste rates would result in higher costs. Staff has the ability to measure container wall thickness to randomly test containers as they are received from the vendor. If containers fail to meet the wall thickness requirement as they are tested, they will be rejected and the City may ask for new containers to be delivered or order containers from the other vendor. A dual award of the contract offers the City the benefit of an alternative vendor to use if the wall thickness requirement is not consistently met and will reduce delays in receiving orders.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1 All bids submitted for Bid No. B111171001 for the purchase of refuse, recycle, and yard (green) waste containers are rejected.
- Section 2 In the best interest of the City, competitive bidding is suspended for the purchase of refuse, recycle, and yard (green) waste containers.
- Section 3 The City Manager, or his designee, is authorized to execute an agreement with Otto Environmental Systems, LLC, attached as Exhibit A, for the purchase of refuse, recycle, and yard (green) waste containers for a five year amount not to exceed \$11,514,423.75.
- Section 4 The City Manager or his designee is authorized to execute an agreement with Toter Incorporated, attached as Exhibit B, for the purchase of refuse, recycle, and yard (green) waste containers for a five year amount not to exceed \$3,838,141.25.
- Section 5 The agreements with Otto Environmental Systems, LLC and Toter Incorporated provide for an initial term of one year, with the option to extend for additional one year terms, up to a total agreement term of five years (including the initial term and all extensions). The City Manager or his designee may authorize such extension(s) for the five year not to exceed amounts specified above, provided that sufficient Solid Waste funds (Fund 6007) are available in the budget adopted for the applicable Fiscal Year(s). The total amount for both contracts for the five year contract period will not exceed \$15,352,565.00.

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- Exhibit A: Commodities Agreement with Otto Environmental Systems, LLC
- Exhibit B: Commodities Agreement with Toter Incorporated

PROJECT #:
PROJECT NAME: Purchase of Refuse, Recycle, and Yard (Green) Waste Containers
DEPARTMENT: Utilities
DIVISION: Solid Waste Division

CITY OF SACRAMENTO

COMMODITIES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

*Otto Environmental Systems (NC), LLC
12700 General Drive
Charlotte, NC 28273
704-588-9191 (phone) 704-558-5250 (fax)*

("CONTRACTOR"), who agree as follows:

- Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

Invitation to Bid	Worker's Compensation Certificate
Instructions to Bidders	Contractor's Bid Proposal Form
Certificate(s) of Insurance	ESBD Program Statement
Drug-Free Workplace Policy and Affidavit	Technical Specifications
Declaration of Compliance (Equal Benefits Ordinance)	
- Equipment.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the equipment described in Exhibit A. CONTRACTOR shall provide said equipment at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for equipment outside the scope of Exhibit A unless prior to the shipping of such equipment: (a) CONTRACTOR notifies CITY and CITY agrees that such equipment are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional equipment; and (c) CITY, after notice, approves in writing a Contract Supplement specifying the additional equipment and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Contract Supplement, unless and until this Agreement or any Contract Supplement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
- Payment.** CITY shall pay CONTRACTOR for equipment furnished pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the equipment furnished pursuant to this Agreement unless pursuant to Section 2, above, CITY approves additional compensation for additional equipment. CONTRACTOR shall submit all billings for said equipment to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing equipment pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
5. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the furnishing of equipment or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
7. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
8. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO

A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: William H. Edgar, Interim City Manager

Attachments

- Exhibit A – Equipment to be Furnished
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E – Non-Discrimination in Employee Benefits

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: Otto Environmental Systems, LLC

Address: 12700 General Drive, Charlotte, NC 28273

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement-Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.

- c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Print Name

Title

EXHIBIT A

COMMODITIES AGREEMENT

EQUIPMENT TO BE FURNISHED

1. Representatives.

The CITY Representative for this Agreement is:

*William Skinner, Integrated Solid Waste Collection Superintendent
Solid Waste Division
2812 Meadowview Road, Bldg. 1
Sacramento, CA 95832
916-808-4932 (phone) 916-808-4999 (fax)
wskinner@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Stephen Stradtman
OTTO Environmental Systems, LLC
CEO
800-795-6886 (Office) 704-588-6899
sbowling@otto-usa.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

Equipment to be Furnished. Furnish to the City of Sacramento refuse, recycling, and yard (green) waste containers in accordance with the special provisions and technical specifications described in Attachments 1 and 2 to Exhibit A, attached hereto and incorporated herein.

The quantities stated in the pricing schedule are estimates only of the City's annual requirements. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.

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Time of Performance. The initial term of the contract shall be upon award of the contract by the City Council through _____, 2012. The contract may be extended on a year to year basis under the same terms and conditions; however, in no case shall the renewal extend beyond five (5) years from the date of award by the City Council of the original contract

EXHIBIT A – ATTACHMENT 1**SPECIAL PROVISIONS****ENVIRONMENTALLY PREFERABLE PROCUREMENT**

The City has adopted a "Sustainable Procurement Policy (SPP) and program. The goal is to encourage the procurement of products and services that help minimize environmental impact resulting from use and disposal of these products. Contractors are encouraged to offer Energy Star, Green Seal, EcoLogo, EPEAT, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. City also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this IFB. Contractors will offer products that have minimal virgin materials and maximum use of recycled products. Contractor must work with the City to attain these goals.

Notwithstanding the above, the Contractor agrees to supply the City of Sacramento with environmentally preferable and effective products in compliance with the specifications in this solicitation and provide services that help minimize environmental impact resulting from use and disposal of products specified in this bid.

The Contractor further agrees that its products specified in this bid do not contain any items, ingredients or components prohibited under the City's SPP Policy.

The City may terminate this contract or take other appropriate actions if the contractor fails to comply or provide adequate supporting documentation to substantiate compliance with the City's SP Policy and requirements specified in the bid.

The City's SPP Policy is available on line at:

[http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable Purchasing Policy_SPP.pdf](http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable_Purchasing_Policy_SPP.pdf) or by contacting the Procurement Services Division at (916) 808-6240.

QUANTITIES (ESTIMATED)

The quantities stated in the pricing schedule are estimates only of the City's requirements. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.

DELIVERY

Due to lack of storage space at City facilities, containers will be ordered as required. Each order/delivery shall be for a minimum of 500 containers/carts or a full truckload. The City must specifically authorize any variation from this requirement.

A delivery schedule will be established between the City and the successful Contractor. It is anticipated that the delivery schedule will be coordinated with the Contractor for delivery in phases. However, intermittent orders may also be placed by the City as needed.

The City shall provide a staging area for delivery of the containers at the Meadowview Road Yard and City of Sacramento North Area Corporation Yard (NACY). Contractor shall have the option of either assembling containers at this location or the containers will be preassembled prior to shipment.

DELIVERY GUARANTEE/PENALTY

Contractor shall guarantee delivery within thirty (30) days after receipt of the order. The City's representative, or designee shall e-mail or fax orders to Contractor's representative identified in Exhibit A. Contractor shall pay a penalty in the amount of \$1.00 per container for every day (24 hour period) that a shipment is late. For purposes of assessing the late penalty, receipt of the order shall be deemed to occur at the close of regular business hours (5:00 P.M. Pacific Standard Time) on the date the e-mail or fax was sent by the City.

COOPERATIVE PURCHASING

If mutually agreeable to both parties, the use of any resulting contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

DEFAULT BY CONTRACTOR

In case of default by Contractor, the City reserves the right to procure the articles or services from other sources and to hold the Contractor responsible for any excess costs occasioned to the City thereby.

DRUG-FREE WORKPLACE POLICY

The City of Sacramento is committed to providing a safe workplace for its employees and citizens alike. An essential part of this commitment is keeping the work environment free from drugs. In 1989, to assist in the achievement of this end, the City established a Drug-Free Workplace Policy.

As a contractor doing business with the City, it is expected that your firm will also implement a drug-free policy that informs your employees of the dangers and prohibition of drug abuse and that you will join with the City in maintaining a drug-free workplace. If, in the performance of work under this contract, any employee of the Contractor exhibits unacceptable behavior that may be related to use of drugs or alcohol, the City reserves the right to discuss the employee's behavior with the Contractor. If the unacceptable behavior persists, the City may require that the employee be removed from all work under this contract.

F.O.B.

Prices shall be submitted F.O.B. Destination, Freight prepaid and Allowed, as follows:

Containers shall be delivered to either location below as specified by the City:

North Area Corporation Yard (NACY)
918 Del Paso Road
Sacramento, CA 95834

City of Sacramento Solid Waste Division
2812 Meadowview Road
Sacramento, CA 95832

WARRANTY/GUARANTEE

Contractor delivering merchandise shall guarantee that they meet the minimum requirements or specifications set forth herein. If it is found that the merchandise delivered does not meet the minimum requirements or specifications, the Contractor will be required to correct the same at Contractor's expense.

DELIVERY HOURS

Unless otherwise directed at the time of order, delivery of containers to the Meadowview Service Complex shall occur between 6:00 a.m. and 10:00 a.m., Monday through Thursday, holidays excluded. Delivery of containers to the staging area at the North Area Corporation Yard (NACY) shall be coordinated and determined by NACY representatives. Contractor use and area of operation(s) shall also be determined by NACY representatives.

DELIVERY METHOD

Delivery must be by truck. Palletized shipments to the City's Meadowview Service Complex and North Area Corporation Yard (NACY) will be accepted. Unpalletized shipments of accessories (lids, axels, wheels and other attachments to containers) to this location must be off-loaded by the delivery carrier. The carrier must unpack and set the material in place as directed and remove all debris and packing material. The City will not provide a fork lift for the unloading of containers.

DISMISSAL OF UNSATISFACTORY EMPLOYEES

The Contractor shall only furnish employees who are competent and skilled for work under this contract. If, in the opinion of the City, an employee of the Contractor is incompetent or disorderly, refuses to perform in accordance with the terms and conditions of the contract, threatens or uses abusive language while on City property, or is otherwise unsatisfactory, that employee shall be removed from all work under this contract.

EVALUATION (INSPECTION)

Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of this specification. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for reinspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.

EXHIBIT A – ATTACHMENT 2

**TECHNICAL SPECIFICATIONS
FOR AUTOMATED LIFT 32, 64, OR 96-GALLON REFUSE,
RECYCLING, AND YARD (GREEN) WASTE CONTAINERS**

1.0 SCOPE AND INTRODUCTION

These specifications detail 32, 64 or 96-gallon wheeled containers made of a high-density polyethylene (HDPE) and/or low density polyethylene plastic molded either rotationally, injected, or blown into refuse containers and the hardware necessary for assembly. The containers provided to this specification must be compatible with the existing Heil 7000/Rapid Rail, Leach Curbtender and AmRep, Inc. fully automated truck systems.

- 1.1 All containers furnished shall be new and unused. Containers shall conform to the best practices known to the trade in design, quality or material and workmanship. Assemblies, sub-assemblies and component parts shall be standard and interchangeable throughout the entire quantity of containers as specified in this invitation bid.
- 1.2 For increased shipping economies, all containers are to have lids attached with wheels and axle assemblies stored in the bottom of container, be fully assembled or after being fully assembled, designed to stack or nest inside one another, provided the containers are designed to stack or nest inside one another. Containers will be delivered in accordance with the container delivery section of this specification.

2.0 DESIGN SPECIFICATIONS

Contractor shall certify that the two-wheeled containers to be provided to the City shall meet the requirements set forth in the ANSI Z245.30-1994. Contractor shall supply certified copies of the results of each test set forth in section 6.2.4.2 testing requirements of ANSI Z245.30-1994.

- 2.1 Containers shall be designed to be lifted by a fully automated lifting system.

2.2 CAPACITY

32, 64 or 96 U.S. liquid gallons (plus or minus 1%) of fluid level full into the body portion only excluding lid capacity. The volume shall be certified in accordance with ANSI Z245.30-1994 Section 6.2.4.2.1 Volumetric Loading Capability.

2.3 DIMENSIONS

Bottom of container shall be round in the gripping area for compatibility with automated refuse equipment.

2.4 LID

Each container shall be furnished with a domed lid molded from the same material as the container. The lid shall be of such configuration that it shall not warp, bend, slump or distort to such an extent that it no longer fits the container tightly or becomes otherwise unserviceable.

- A. The lid shall be constructed such that they seal or overlap the container to ensure that the container will be watertight. The lid shall not bind on the handle in the open position.
- B. The lids are to open or rotate a full 270 degrees and to be attached to the container without use of metal hinge, PVC, or plastic glued connections.
- C. The lid wall thickness shall be molded of high-density polyethylene plastic (HDPE) or linear low density polyethylene. Minimum wall thickness for 32, 64, and 96-gallon containers shall be 0.100 inches.
- D. The lid shall be able to stay open unsupported without the use of counter weights or props while maintaining container stability.

2.5 HANDLE

The handle will be rounded and molded in or bolted onto the container body and shall expose plastic surfaces to the hands of the user. Metal or exposed PVC is unacceptable.

- A. Each handle shall have two (2) grasping handles and shall conform to the ANSI Z245.30-1994 Section 6.1.4.2 and 6.1.4.3 regarding handles.

2.6 COLORS

Color of body, lid and handle for each commodity container shall be: a consistent hue of dark blue for recycling containers to match or closely match those already in use by the City; a consistent hue of green granite for the green waste containers to match or closely match those already in use by the City; and a consistent hue of green for the refuse containers to match or closely match those already in use by the City. Close approximation of current color samples and photos are contained in Exhibit A – Attachment 3.

2.7 WHEELS

The wheels shall be black in color and be made of rubber material or virgin plastic. Wheel diameters will be no less than 10" and no more than 12" for the 64 and 96-gallon containers, and 7" to 10" respectively for the 32-gallon containers. Wheels should have 1.5" minimum tread width for all containers.

- A. The wheel and axle assembly shall be capable of meeting the ANSI standard Z245.30-1994, which limits maximum load rating to 3.5 pounds per gallon; 32-gallon load 112 lbs., 64-gallon load 224 lbs., 96-gallon load 335 lbs. Each container shall be capable of bearing and transporting the weight on level, sloped or stepped surfaces.
- B. Each container shall be furnished with an axle either 5/8" or 3/4" steel rod (either galvanized or zinc plated). The axle must pass through container body outside the refuse area. The wheel can be secured by end or sturdy pins.

2.8 STABILITY

The container shall be stable and self-balancing when in the upright position either loaded or empty. The container must be designed to withstand winds up to 30 m.p.h. when empty or loaded, lid opened or closed.

2.9 FINISH

Interior and exterior surfaces shall be uniform in appearance and free of foreign substance, shrink holes, cracks, blow holes webs and other superficial or structural defects that could adversely affect the appearance and performance of the container. The interior surface of the container shall be smooth.

3.0 RESIN WEIGHT

Resin must satisfy manufacturers original specification for first quality material. Resin weight without hardware shall be 14 lbs. for 32-gallon containers, 22 lbs. for 64-gallon containers, and 30 lbs. for 96-gallon containers.

3.1 The body of the container, the lid, and all parts other than the tires and axles shall be composed of high-density polyethylene or linear low density polyethylene. Minimum wall thickness for all areas of the body of the container must be no less than .150 inch for 64 and 96-gallon containers, and .118 inch for 32-gallon containers. Vendor shall state type of material used. Material used shall be 100% recyclable. Polyethylene resin shall contain an ultraviolet stabilizer compounded at a concentration of not less than .50% in the resin weight.

3.2 Resin shall contain color pigment at a concentration of 0.50% to 1.0% in the resin by weight. Color shall be non-fading throughout the warranty. The color and shade of containers shall be consistent and without noticeable variation from one to another.

3.3 All containers must be manufactured with a minimum of 15% post consumer recycled (PCR) or higher PCR content in conformance with proposed PCR content. All plastic materials used in the construction of the containers shall be recyclable into other polyethylene products of similar nature.

3.4 WEARABILITY

All parts of the container shall withstand excessive wear such that it is usable for the warranty period of ten (10) years in the intended application including resistance to bottom wear and permanent deformation from loading and unloading of solid waste. Contractor shall submit certified test results from ANSI Z245.30-1994 section 6.2.4.2.4. (durability during pulling) and 6.2.4.2.5 (loading and unloading: cycle test) upon request. It is to be understood that the container will be gripped by hydraulically operated equipment and will come in regular contact with asphalt, cement, and other rough surfaces. Should the container body fail during the warranty period, Contractor will provide to the City, at no cost to the City, a replacement container including a new lid. Subsequent failure of the replacement container shall not absolve Contractor of its obligation to replace, until a proper container is finally delivered. However, if the lid should fail, then only the lid shall be replaced.

3.5 DURABILITY

All containers shall remain durable in hot and cold temperature variations of this region under loading conditions as set forth in ANSI Z245.30-1994, section 6.2.4.1 load weight rating. In addition the container shall have a life expectancy of not less than ten (10) years during which time the container and its component parts shall maintain sufficient strength, shape and appearance, and to be resistant to blows, kicks and rodent penetration, such as to require no routine maintenance, in general be maintenance free.

3.6 WARRANTY CLAIM PROCEDURE

Any containers or components of containers that fail during the first 90-day warranty period shall be replaced by the Contractor.

Any containers or components of containers, that fail during the warranty period of ten (10) years shall be replaced by Contractor as specified in section 3.4 above. Contractor shall make available to the City spare parts and components to maintain the containers through the warranty period, although this will not preclude the City from requiring the Contractor to replace any defective parts. Warranty claims must be processed and completed by Contractor within 30 calendar days after being submitted by the City.

4.0 DELIVERY SCHEDULE

Deliveries will be accepted Monday through Friday. All deliveries must arrive at the specified location not later than 10 a.m. Advance notice (a minimum of twenty-four hours) prior to delivery is required. Please contact:

Mr. William Skinner, Integrated Solid Waste Collection Superintendent 916-808-4932
(Alternate number 916-997-1744)

4.1 Deliveries shall be made with minimum orders of 500 containers or a full truckload, and shall occur within thirty (30) calendar days after receipt of order.

4.2 Containers that require time and motion in excess of five (5) minutes to assemble such as lids, axles, and wheels must be assembled on arrival, or assembled at a designated staging area provided by the City. Contractor shall be responsible for any loss of container components stored at a City facility during assembly. Contractor is encouraged to secure components or containers assembled on site in a locked box.

5.0 IDENTIFICATION

A numbering system shall be developed that can trace each container back to an oven cycle (i.e., year, day, shift, and mold). Such numbering system shall appear on each container. Containers must be manufactured within three (3) months of delivery to the City as indicated by the numbering system on the container. Numbering identification information shall be provided to the City in Excel electronic format with each container delivery for information and warranty purposes.

5.1 All containers shall be identified with wording and arrows inscribed and molded in raised letters into the lid of the containers. (See Exhibit A – Attachment 3)

6.0 POST CONSUMER RESIN (PCR) CONTENT

6.1 **Definition.** Post consumer resin or materials shall be defined as a material or finished product that has served its intended end use and has been discarded for disposal or recovery having completed its life as a consumer item. No materials originated from any in-plant operations (i.e., industrial scrap) shall be considered as PCR content.

6.2 **Certification and documentation of PCR content.** The Contractor shall submit the following to the City during the period of any resulting contract:

- A. Contractor shall submit invoices and/or bills of lading showing the actual source and the purchase of PCR as well as the destination of shipments upon request by the City and attest to its use in the manufacturing of the containers at the percentage prescribed by the City or at the higher PCR percentages proposed by the Contractor.
- B. Documentation of post consumer resin usage must reflect the number of pounds used in manufacturing containers in order to facilitate audited compliance with the Contractor's proposed PCR content.
- C. Contractor shall submit an Amass flow report depicting the origin and the use of the PCR for every corresponding invoice.

6.3 **Remedies for non-compliance with PCR requirements.** Noncompliance with proposed PCR requirements at any time during the contract period shall constitute a material breach of the contract and the City shall have the right to terminate the contract.

6.4 **Right of the City to audit PCR content and manufacturing process.** The City reserves the right to audit or to request periodic audits by an independent company of the use of recycled materials in the production of the containers provided under this contract. Contractor shall be responsible for all costs related to two audits. Contractor shall be required to allow plant inspection visits by the City in conformance with the conditions outlined below:

- A. The Contractor shall pay all reasonable per diem for up to two plant inspections by the City and/or its independent contractor.
- B. Per diem shall include all reasonable transportation costs, lodging and meals for up to two persons.
- C. It is anticipated that a visit to the manufacturing facility would require between 1-3 days depending on location, transportation, distance and other factors.
- D. City requests for reimbursement shall not exceed accepted limits for per diem as defined by City policies and practices.

7.0 TESTING

7.1 The City of Sacramento reserves the right to perform, or have performed, such inspection and testing as considered necessary to assure the acceptability and suitability of the containers, lids, and hardware. The City of Sacramento may, at its option, have testing performed by an independent laboratory. The expense of these tests shall be borne by the City of Sacramento if material meets test standards. The expense of these tests shall be borne by the contractor if material does not meet test standards. The City of Sacramento will use ASTM standards for

purposes of evaluating such tests or inspections. Tests or inspections performed under this reservation shall not be considered a waiver of any right or breach of warranty.

- 7.2 The City will test one of five hundred containers and/or lids delivered for conformance with the specifications in the agreement. If the container and/or lid fails to meet specifications, a second container and/or lid will be tested. If the second container and/or lid fails to meet specifications described in the agreement, the entire order will be rejected and replaced at no charge by the vendor. The City will pay for the tests unless the container and/or lid fails to meet specifications, in which case the vendor will pay for the test and replace all containers and/or lids in that delivery.
- 7.3 Should Contractor fail or refuse to provide the required reports, samples, and information required in these specifications, it shall be expressly understood and agreed this constitutes breach of contract. The City of Sacramento may withhold all payment due to Contractor and pursue any and all legal and equitable remedies.
- 7.4 It is further agreed that the City of Sacramento's review, concurrence or approval of Contractor's documentation or product shall in no way relieve the Contractor of its responsibilities to comply with the specifications nor shall it be construed as a waiver or abridgement of the City of Sacramento's legal remedies, rights, and powers.

EXHIBIT A – ATTACHMENT 3

WORDING AND LOGO

The following wording shall be molded or hot stamped on the top of the lid of all containers in raised letters. Wording shall be in English and Spanish.

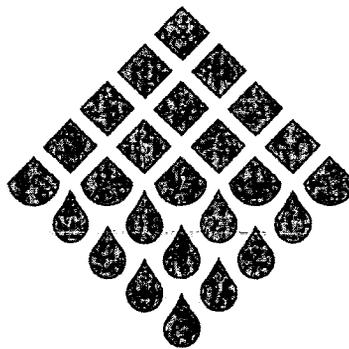
“NO SCAVENGING ALLOWED.”

The following wording shall be molded or hot stamped on the back under the handle of all containers in raised letters. Wording shall be in English and Spanish.

”KEEP OFF SIDEWALK AND OUT OF BIKE LANE”

A white font hot stamp of the logo represented below shall be molded or hot stamped on both sides of each refuse container in raised letters.

The logo represented below shall be molded or hot stamped on the left side of yard (green) waste and recycling container in raised letters (viewing from the front).



CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

SOLID WASTE SERVICES

The hot stamp shall be a minimum of 5" in diameter or larger, if space permits.

All Text is Hot Stamped with a White Font (viewing from front of container)

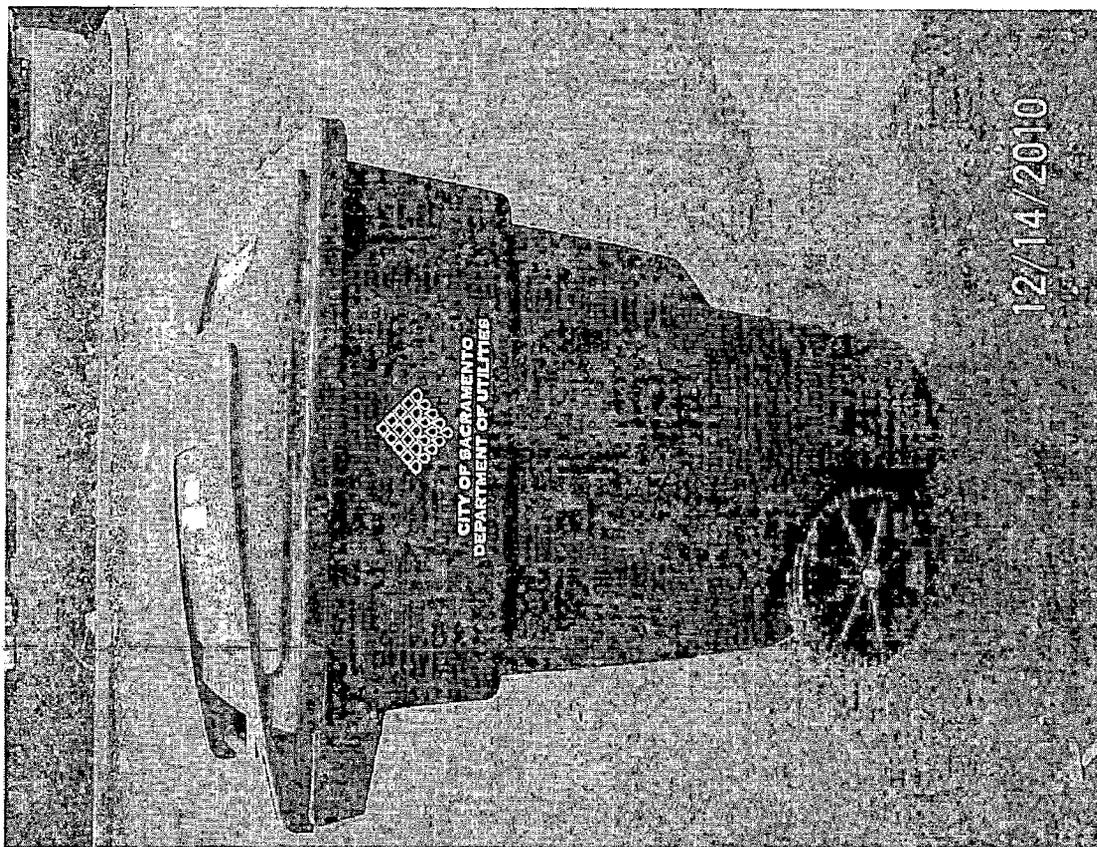
Top - Recyclables Only Solamente Reciclaje

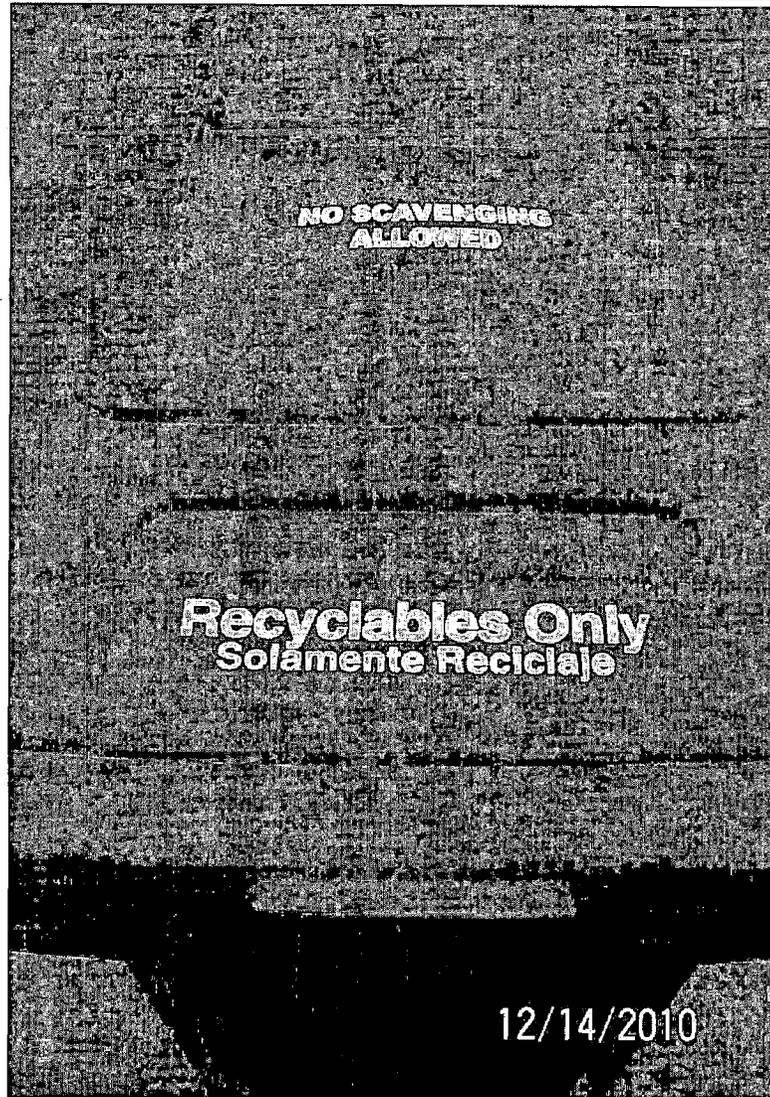
Front - Tracking Number

Right Side - Recycle logo

Left Side - Dept. of Utilities logo

Exhibit A - Attachment 3 RECYCLE CONTAINER



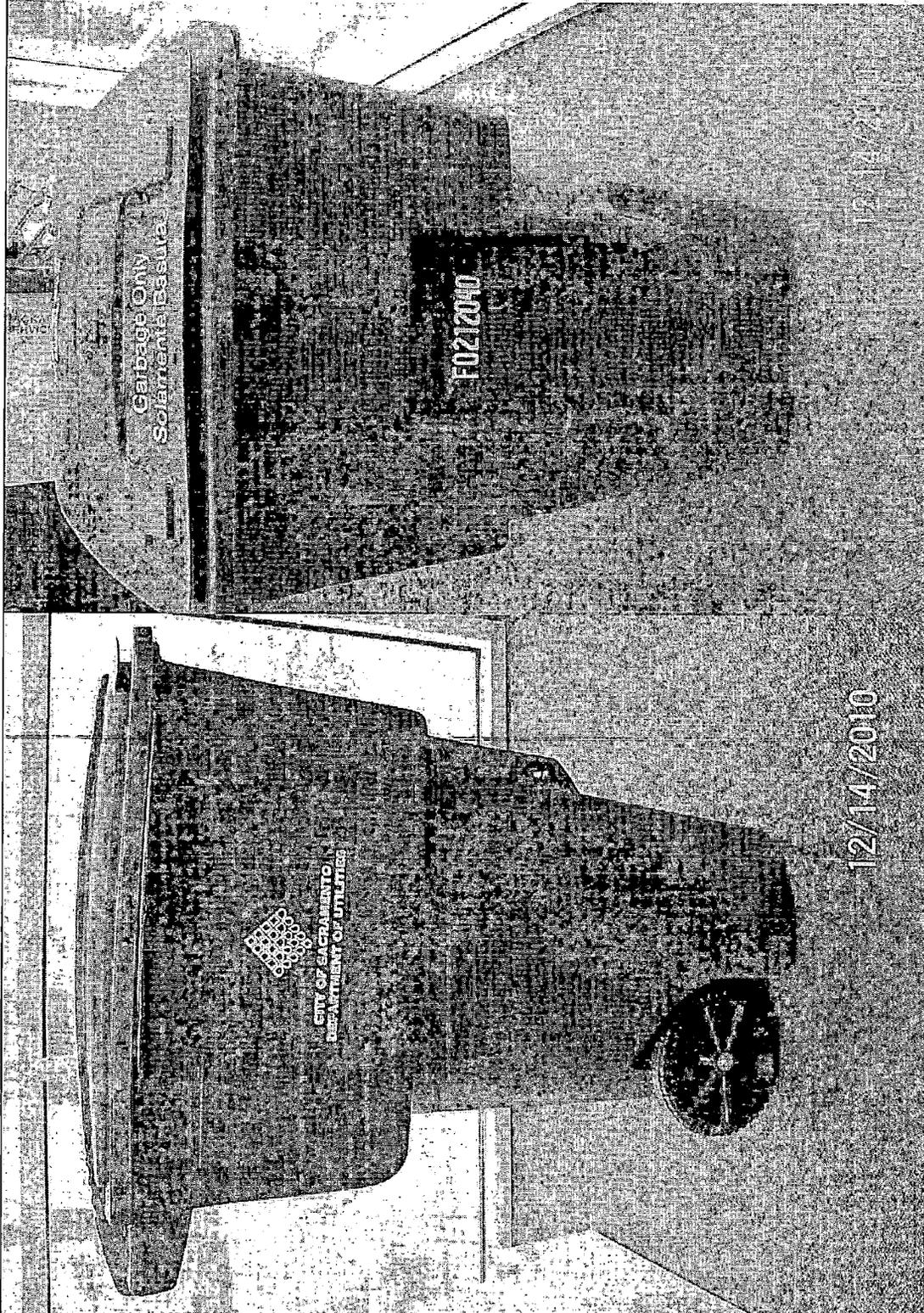


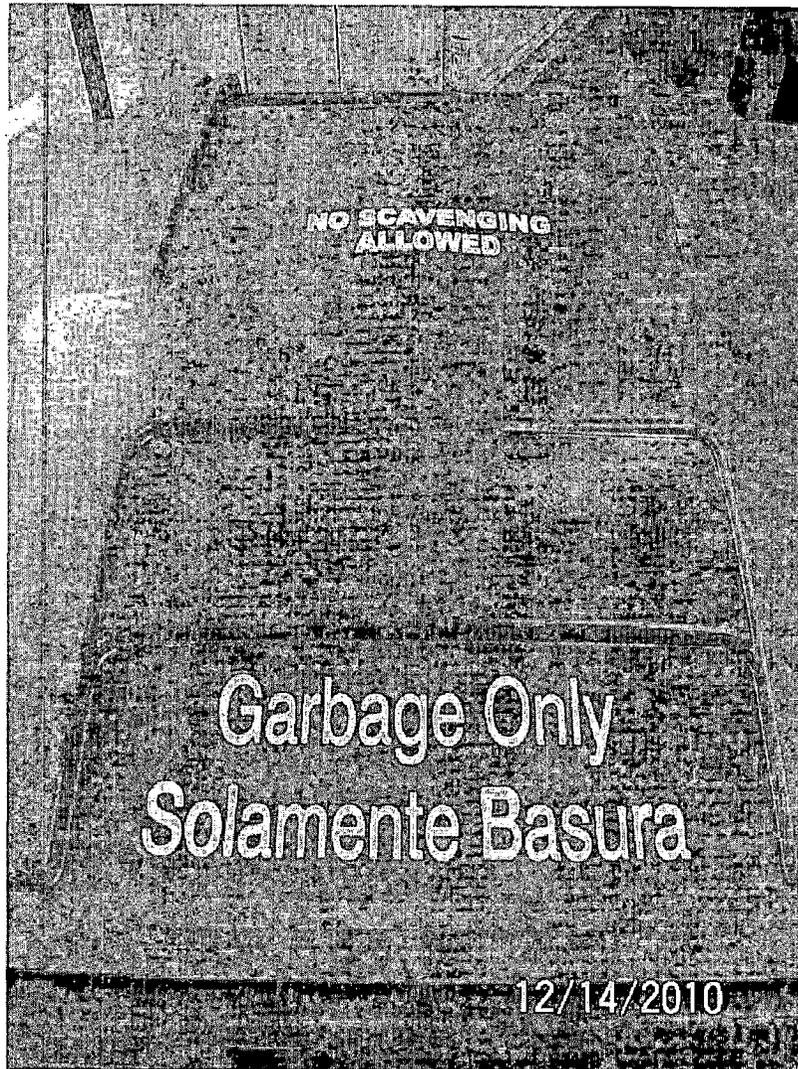
Wording should be in English and Spanish

All Text is Hot Stamped with a White Font (viewing from front of container).

- Top - Garbage Only Solamente Basura
- Front - Tracking Number
- Sides - Dept. of Utilities logo
- Back - "KEEP OFF SIDEWALK AND OUT OF BIKE LANE" (See Exhibit A)

Exhibit A - Attachment 3 REFUSE CONTAINER





Wording should be in English and Spanish

All text is Hot Stamped with a White Font (Viewing from front of container)

- Top - "Yard Waste Only Desperdicios Del Jardin Solamente"
- Front - Tracking Number
- Right Side - English "City of Sacramento Yard Waste Program" with a picture of a leaf

Exhibit A - Attachment 3 YARD (GREEN) WASTE CONTAINER

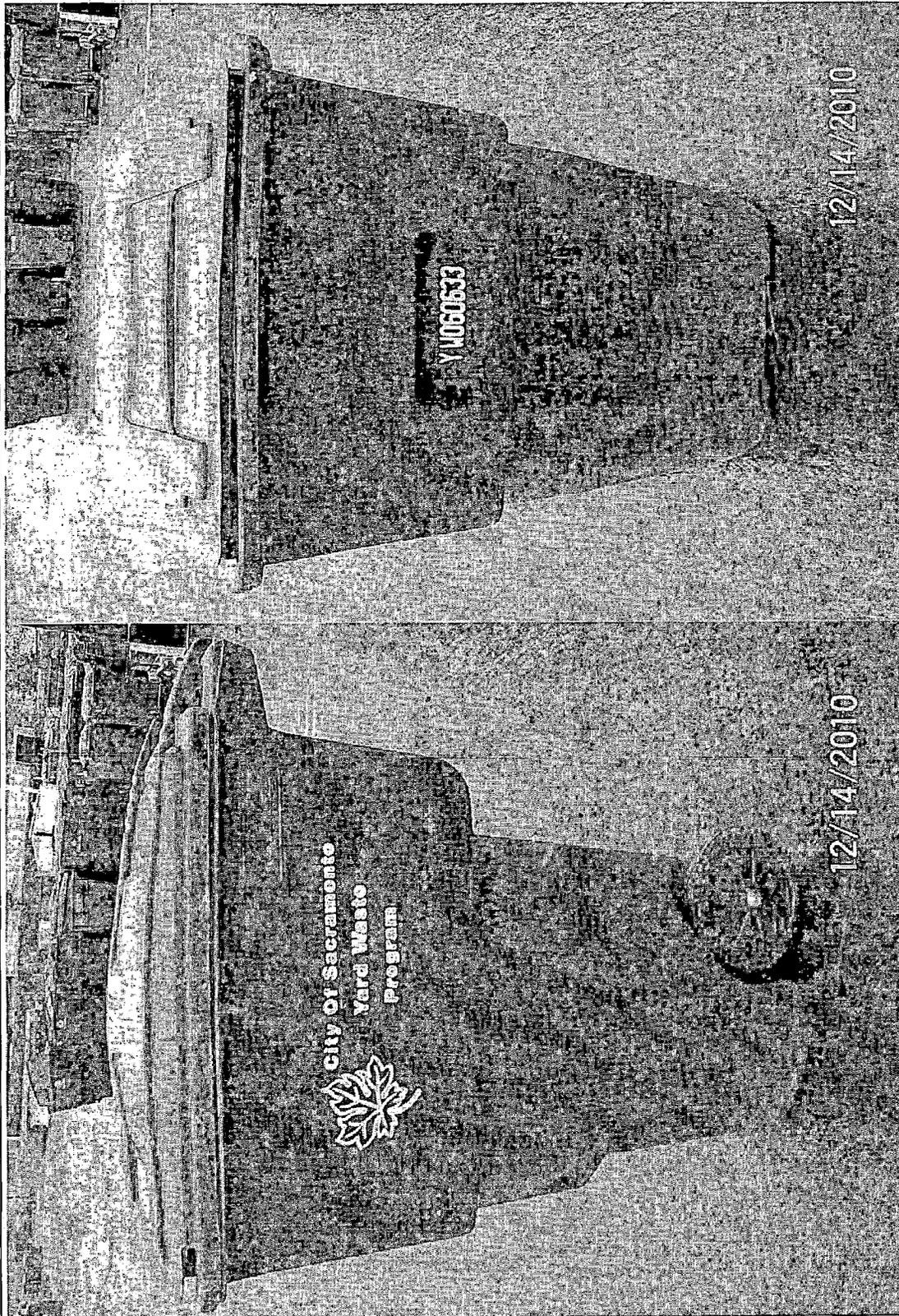
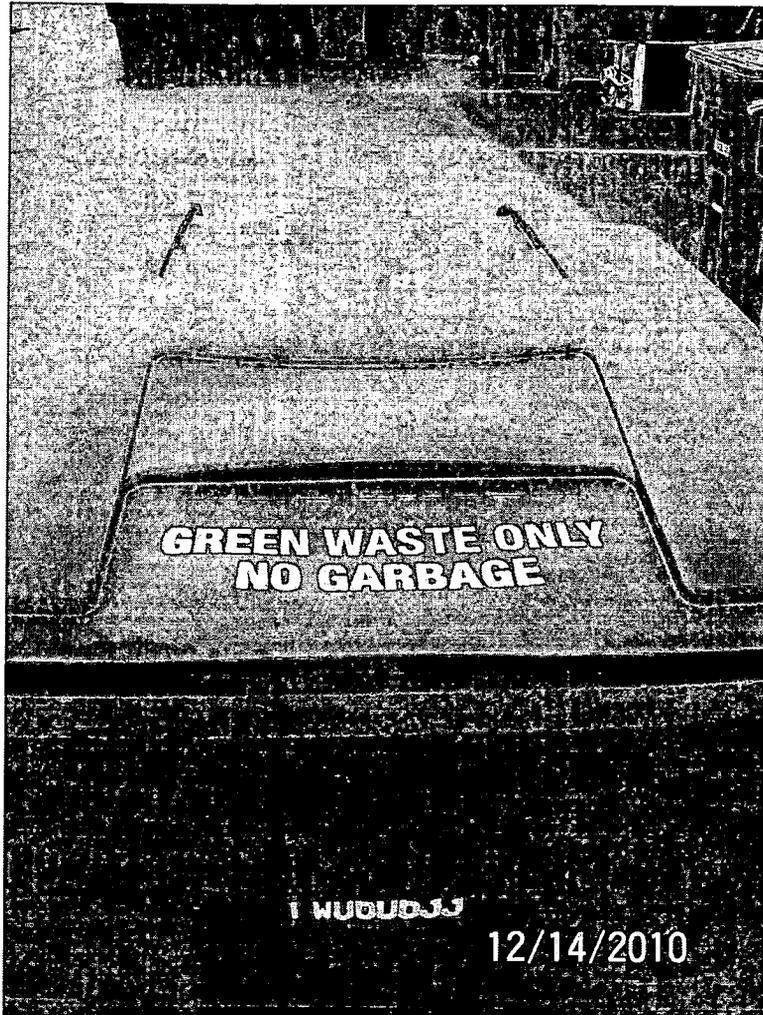


Exhibit A – Attachment 3 YARD (GREEN) WASTE CONTAINER



Lid should read "Yard Waste Only No Garbage Desperdicios Del Jardin Solamente"

EXHIBIT B

COMMODITIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the furnishing of all equipment set forth in Exhibit A and Attachment 1, 2 and 3 to Exhibit A, including normal revisions, and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$11,514,423.75.
2. **Billable Rates.** CONTRACTOR shall be paid as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper furnishing of equipment and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made for the furnishing of equipment or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Description of equipment billed under this invoice, and overall status of project
 - (2) Date of Invoice Issuance
 - (3) Sequential Invoice Number
 - (4) CITY's Purchase Order Number
 - (5) Total Contract Amount
 - (6) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (7) Total Billed to Date
 - (8) Total Remaining on Contract
 - C. Items shall be separated into equipment furnished and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.
 - D. Requests for payment and invoices shall be sent to:

*Solid Waste Division
Attention: Accounts Payable
2812 Meadowview Road, Bldg. 1
Sacramento, CA 95832
916-808-4931 (phone) 916-808-4999 (fax)*

5. **Additional Equipment.** Additional equipment are those equipment or supplies related to the equipment of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Equipment shall be provided only when a Contract Supplement authorizing such Additional Equipment is approved by CITY in accordance with CITY's Contract Supplement procedures.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after furnishing of all equipment and Additional Equipment hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all e equipment and Additional Equipment furnished under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

EXHIBIT B – ATTACHMENT 1

PAYMENT TO CONTRACTOR

PRICING SCHEDULE

	Otto Environmental System, LLC	
96 gallon	\$	48.36
64 gallon	\$	45.11
32 gallon	\$	31.56
Discount Offered		10%

PRICE ADJUSTMENTS

The price schedule shall remain firm for the first year of the contract period. The price schedule for the remaining years of the contract, if renewed, shall be subject to adjustment only if increases occur in the industry. Such increases shall not exceed 5% per year or the latest yearly percentage (%) increase in the Producer Price Index (PPI) for plastics material and resins mfg. index (Series ID: pcu325211325211) as published by the Bureau of Labor Statistics, U.S. Department of Labor, whichever is less. The yearly increase or decrease in the PPI shall be the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the comparable month one year prior. Any requested cost increase shall be fully documented and submitted to the City at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the PPI of the industry costs decline, the City shall receive from the Contractor a reduction of costs in accordance with the terms and conditions for adjustments detailed above.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. If the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, City may terminate the contract as provided in Section 9 of Exhibit D.

PURCHASE ORDER

1. A Purchase Order will be issued to the Contractor on behalf of the City organization(s) who will be ordering items/services covered in the contract. The Purchase Order will be enclosed with the resulting contract or will be issued shortly thereafter, and will become an integral part of the resulting contract. Each Purchase Order will cite a specific dollar value to cover a particular item or specified period of time. If a contract is for a specific period of time and extends beyond the close of the City's fiscal year of June 30th, a second purchase order may be issued.
2. The Purchase Order does not supersede any provision of the resulting contract. Performance time and dates are determined solely by the contract, and any modification thereto.

3. Delivery of material and/or services are not to begin until receipt of the Purchase Order and/or other notification by the City.

4. All cash discounts, if taken, shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of vendor's invoice.

EXHIBIT C

COMMODITIES AGREEMENT

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall [check one] x Not furnish any facilities or equipment for this Agreement; or
 furnish the following facilities or equipment for the Agreement; [*list, if applicable*]

EXHIBIT D

COMMODITIES AGREEMENT

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its furnishing of equipment hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or furnishing of equipment under this Agreement. (As used in this Exhibit D, the term "equipment" shall include both equipment and Additional Equipment as such terms is defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession, provide any services, or furnish any equipment under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession, provide an services,, or furnish any equipment. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable; special and unique assets of the CITY. CONTRACTOR agrees to protect all City

Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any performance by CONTRACTOR under this Agreement, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by

CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the work required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform the work pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease performing pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of equipment furnished by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed furnishing of all equipment required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the equipped furnished by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. **Indemnity.**

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the furnishing of equipment by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.
20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.
21. **Funding Availability.**

- A. This Agreement is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
 - B. The City's payment obligation under this Agreement shall not at any time exceed the amount of the funds appropriated and approved for such purpose by the Sacramento City Council.
 - C. This Agreement shall terminate without penalty at the end of the fiscal year in the event funds to make payment under this Agreement are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Agreement shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject further, to the limitation in subsection 9. of these General Conditions.
 - D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.
22. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under this Agreement will be accomplished.
23. **Material Safety Data Sheets (MSDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.
24. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the this Agreement either for cause or for convenience as provided in Section 9 of these General Conditions.
25. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of this Agreement. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
26. **Guarantee.** The Contractor guarantees that all merchandise delivered and/or work or services performed under this Agreement shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not

meet the minimum requirements of this Agreement, the Contractor shall be required to correct the same at Contractor's sole expense.

27. Use Tax Requirements. During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform this Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization, ("SBE") in accordance with the applicable SBE criteria and requirements.
- B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
- C. The above provisions shall apply in all instances unless prohibited by the funding source for this Agreement.

EXHIBIT E

COMMODITIES AGREEMENT

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street

construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Procurement Services Division, at the same address, containing the details of the alleged violation.

Toter Incorporated

PROJECT #:
PROJECT NAME: Purchase of Refuse, Recycle, and Yard (Green) Waste Containers
DEPARTMENT: Utilities
DIVISION: Solid Waste Division

CITY OF SACRAMENTO

COMMODITIES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

*Toter Incorporated
841 Meacham Road
Statesville, NC 26877
Skip Lynn, Vice President, Sales-Western Region
559-320-0364 (phone) 559-320-0366 (fax)*

("CONTRACTOR"), who agree as follows:

1. **Contract.** The Contract shall consist of this Agreement and each of the following documents (if applicable), which are incorporated herein by reference:

Invitation to Bid	Worker's Compensation Certificate
Instructions to Bidders	Contractor's Bid Proposal Form
Certificate(s) of Insurance	ESBD Program Statement
Drug-Free Workplace Policy and Affidavit	Technical Specifications
Declaration of Compliance (Equal Benefits Ordinance)	

2. **Equipment.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the equipment described in Exhibit A. CONTRACTOR shall provide said equipment at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for equipment outside the scope of Exhibit A unless prior to the shipping of such equipment: (a) CONTRACTOR notifies CITY and CITY agrees that such equipment are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional equipment; and (c) CITY, after notice, approves in writing a Contract Supplement specifying the additional equipment and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Contract Supplement, unless and until this Agreement or any Contract Supplement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
3. **Payment.** CITY shall pay CONTRACTOR for equipment furnished pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the equipment furnished pursuant to this Agreement unless pursuant to Section 2, above, CITY approves additional compensation for additional equipment. CONTRACTOR shall submit all billings for said equipment to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.

Toter Incorporated

4. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing equipment pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
5. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the furnishing of equipment or payment therefor, the General Provisions shall control over said terms or conditions.
6. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit F. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
7. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
8. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: William H. Edgar, Interim City Manager

Attachments

- Exhibit A – Equipment to be Furnished
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E – Non-Discrimination in Employee Benefits

Toter Incorporated

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Toter Incorporated

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: Toter Incorporated

Address: 841 Meacham Road, Statesville, NC 28677

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.

- c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1) year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.
 - f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.
5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.

Toter Incorporated

7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.

Signature of Authorized Representative

Date

Print Name

Title

EXHIBIT A

**COMMODITIES AGREEMENT
EQUIPMENT TO BE FURNISHED**

1. Representatives.

The CITY Representative for this Agreement is:

*William Skinner, Integrated Solid Waste Collection Superintendent
Solid Waste Division
2812 Meadowview Road, Bldg. 1
Sacramento, CA 95832
916-808-4932 (phone) 916-808-4999 (fax)
wskinner@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Skip Lynn
Toter Incorporated
P.O. Box 7
Sanger, CA 93657
559-320-0364 (phone) 559-320-0366 (fax)
slynn@wastequip.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

Equipment to be Furnished. Furnish to the City of Sacramento refuse, recycling, and yard (green) waste containers in accordance with the special provisions and technical specifications described in Attachments 1 and 2 to Exhibit A, attached hereto and incorporated herein.

The quantities stated in the pricing schedule are estimates only of the City's annual requirements. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.

2. Time of Performance. The initial term of the contract shall be upon award of the contract by the City Council through _____, 2012. The contract may be extended on a year to year basis under the same terms and conditions; however, in no case shall the renewal extend beyond five (5) years from the date of award by the City Council of the original contract

EXHIBIT A – ATTACHMENT 1

SPECIAL PROVISIONS

ENVIRONMENTALLY PREFERABLE PROCUREMENT

The City has adopted a "Sustainable Procurement Policy (SPP) and program. The goal is to encourage the procurement of products and services that help minimize environmental impact resulting from use and disposal of these products. Contractors are encouraged to offer Energy Star, Green Seal, EcoLogo, EPEAT, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. City also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this IFB. Contractors will offer products that have minimal virgin materials and maximum use of recycled products. Contractor must work with the City to attain these goals.

Notwithstanding the above, the Contractor agrees to supply the City of Sacramento with environmentally preferable and effective products in compliance with the specifications in this solicitation and provide services that help minimize environmental impact resulting from use and disposal of products specified in this bid.

The Contractor further agrees that its products specified in this bid do not contain any items, ingredients or components prohibited under the City's SPP Policy.

The City may terminate this contract or take other appropriate actions if the contractor fails to comply or provide adequate supporting documentation to substantiate compliance with the City's SP Policy and requirements specified in the bid.

The City's SPP Policy is available on line at:
http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable_Purchasing_Policy_SPP.pdf or by contacting the Procurement Services Division at (916) 808-6240.

QUANTITIES (ESTIMATED)

The quantities stated in the pricing schedule are estimates only of the City's requirements. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period.

DELIVERY

Due to lack of storage space at City facilities, containers will be ordered as required. Each order/delivery shall be for a minimum of 500 containers/carts or a full truckload. The City must specifically authorize any variation from this requirement.

A delivery schedule will be established between the City and the successful Contractor. It is anticipated that the delivery schedule will be coordinated with the Contractor for delivery in phases. However, intermittent orders may also be placed by the City as needed.

The City shall provide a staging area for delivery of the containers at the Meadowview Road Yard and City of Sacramento North Area Corporation Yard (NACY). Contractor shall have the option of either assembling containers at this location or the containers will be preassembled prior to shipment.

DELIVERY GUARANTEE/PENALTY

Contractor shall guarantee delivery within thirty (30) days after receipt of the order. The City's representative, or designee shall e-mail or fax orders to Contractor's representative identified in Exhibit A. Contractor shall pay a penalty in the amount of \$1.00 per container for every day (24 hour period) that a shipment is late. For purposes of assessing the late penalty, receipt of the order shall be deemed to occur at the close of regular business hours (5:00 P.M. Pacific Standard Time) on the date the e-mail or fax was sent by the City.

COOPERATIVE PURCHASING

If mutually agreeable to both parties, the use of any resulting contract may be extended to other government agencies. It shall be understood that all terms and conditions as specified herein shall apply. The City of Sacramento will not be an agent, partner or representative of any other government agency as it relates to this specification and is not obligated or liable, including, but not limited to, payment for an order placed by any other government agency.

DEFAULT BY CONTRACTOR

In case of default by Contractor, the City reserves the right to procure the articles or services from other sources and to hold the Contractor responsible for any excess costs occasioned to the City thereby.

DRUG-FREE WORKPLACE POLICY

The City of Sacramento is committed to providing a safe workplace for its employees and citizens alike. An essential part of this commitment is keeping the work environment free from drugs. In 1989, to assist in the achievement of this end, the City established a Drug-Free Workplace Policy.

As a contractor doing business with the City, it is expected that your firm will also implement a drug-free policy that informs your employees of the dangers and prohibition of drug abuse and that you will join with the City in maintaining a drug-free workplace. If, in the performance of work under this contract, any employee of the Contractor exhibits unacceptable behavior that may be related to use of drugs or alcohol, the City reserves the right to discuss the employee's behavior with the Contractor. If the unacceptable behavior persists, the City may require that the employee be removed from all work under this contract.

F.O.B.

Prices shall be submitted F.O.B. Destination, Freight prepaid and Allowed, as follows:

Containers shall be delivered to either location below as specified by the City:

North Area Corporation Yard (NACY)
918 Del Paso Road
Sacramento, CA 95834

City of Sacramento Solid Waste Division
2812 Meadowview Road
Sacramento, CA 95832

WARRANTY/GUARANTEE

Contractor delivering merchandise shall guarantee that they meet the minimum requirements or specifications set forth herein. If it is found that the merchandise delivered does not meet the minimum requirements or specifications, the Contractor will be required to correct the same at Contractor's expense.

DELIVERY HOURS

Unless otherwise directed at the time of order, delivery of containers to the Meadowview Service Complex shall occur between 6:00 a.m. and 10:00 a.m., Monday through Thursday, holidays excluded. Delivery of containers to the staging area at the North Area Corporation Yard (NACY) shall be coordinated and determined by NACY representatives. Contractor use and area of operation(s) shall also be determined by NACY representatives.

DELIVERY METHOD

Delivery must be by truck. Palletized shipments to the City's Meadowview Service Complex and North Area Corporation Yard (NACY) will be accepted. Unpalletized shipments of accessories (lids, axels, wheels and other attachments to containers) to this location must be off-loaded by the delivery carrier. The carrier must unpack and set the material in place as directed and remove all debris and packing material. The City will not provide a fork lift for the unloading of containers.

DISMISSAL OF UNSATISFACTORY EMPLOYEES

The Contractor shall only furnish employees who are competent and skilled for work under this contract. If, in the opinion of the City, an employee of the Contractor is incompetent or disorderly, refuses to perform in accordance with the terms and conditions of the contract, threatens or uses abusive language while on City property, or is otherwise unsatisfactory, that employee shall be removed from all work under this contract.

EVALUATION (INSPECTION)

Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of this specification. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for reinspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.

EXHIBIT A – ATTACHMENT 2
TECHNICAL SPECIFICATIONS
FOR AUTOMATED LIFT 32, 64, OR 96-GALLON REFUSE,
RECYCLING, AND YARD (GREEN) WASTE CONTAINERS

1.0 SCOPE AND INTRODUCTION

These specifications detail 32, 64 or 96-gallon wheeled containers made of a high-density polyethylene (HDPE) and/or low density polyethylene plastic molded either rotationally, injected, or blown into refuse containers and the hardware necessary for assembly. The containers provided to this specification must be compatible with the existing Heil 7000/Rapid Rail, Leach Curbtender and AmRep, Inc. fully automated truck systems.

1.1 All containers furnished shall be new and unused. Containers shall conform to the best practices known to the trade in design, quality or material and workmanship. Assemblies, sub-assemblies and component parts shall be standard and interchangeable throughout the entire quantity of containers as specified in this invitation bid.

1.2 For increased shipping economies, all containers are to have lids attached with wheels and axle assemblies stored in the bottom of container, be fully assembled or after being fully assembled, designed to stack or nest inside one another, provided the containers are designed to stack or nest inside one another. Containers will be delivered in accordance with the container delivery section of this specification.

2.0 DESIGN SPECIFICATIONS

Contractor shall certify that the two-wheeled containers to be provided to the City shall meet the requirements set forth in the ANSI Z245.30-1994. Contractor shall supply certified copies of the results of each test set forth in section 6.2.4.2 testing requirements of ANSI Z245.30-1994.

2.1 Containers shall be designed to be lifted by a fully automated lifting system.

2.2 CAPACITY

32, 64 or 96 U.S. liquid gallons (plus or minus 1%) of fluid level full into the body portion only excluding lid capacity. The volume shall be certified in accordance with ANSI Z245.30-1994 Section 6.2.4.2.1 Volumetric Loading Capability.

2.3 DIMENSIONS

Bottom of container shall be round in the gripping area for compatibility with automated refuse equipment.

2.4 LID

Each container shall be furnished with a domed lid molded from the same material as the container. The lid shall be of such configuration that it shall not warp, bend, slump or distort to such an extent that it no longer fits the container tightly or becomes otherwise unserviceable.

- A. The lid shall be constructed such that they seal or overlap the container to ensure that the container will be watertight. The lid shall not bind on the handle in the open position.
- B. The lids are to open or rotate a full 270 degrees and to be attached to the container without use of metal hinge, PVC, or plastic glued connections.
- C. The lid wall thickness shall be molded of high-density polyethylene plastic (HDPE) or linear low density polyethylene. Minimum wall thickness for 32, 64, and 96-gallon containers shall be 0.100 inches.
- D. The lid shall be able to stay open unsupported without the use of counter weights or props while maintaining container stability.

2.5 HANDLE

The handle will be rounded and molded in or bolted onto the container body and shall expose plastic surfaces to the hands of the user. Metal or exposed PVC is unacceptable.

- A. Each handle shall have two (2) grasping handles and shall conform to the ANSI Z245.30-1994 Section 6.1.4.2 and 6.1.4.3 regarding handles.

2.6 COLORS

Color of body, lid and handle for each commodity container shall be: a consistent hue of dark blue for recycling containers to match or closely match those already in use by the City; a consistent hue of green granite for the green waste containers to match or closely match those already in use by the City; and a consistent hue of green for the refuse containers to match or closely match those already in use by the City. Close approximation of current color samples and photos are contained in Exhibit A – Attachment 3.

2.7 WHEELS

The wheels shall be black in color and be made of rubber material or virgin plastic. Wheel diameters will be no less than 10" and no more than 12" for the 64 and 96-gallon containers, and 7" to 10" respectively for the 32-gallon containers. Wheels should have 1.5" minimum tread width for all containers.

- A. The wheel and axle assembly shall be capable of meeting the ANSI standard Z245.30-1994, which limits maximum load rating to 3.5 pounds per gallon; 32-gallon load 112 lbs., 64-gallon load 224 lbs., 96-gallon load 335 lbs. Each container shall be capable of bearing and transporting the weight on level, sloped or stepped surfaces.
- B. Each container shall be furnished with an axle either 5/8" or 3/4" steel rod (either galvanized or zinc plated). The axle must pass through container body outside the refuse area. The wheel can be secured by end or sturdy pins.

2.8 STABILITY

The container shall be stable and self-balancing when in the upright position either loaded or empty. The container must be designed to withstand winds up to 30 m.p.h. when empty or loaded, lid opened or closed.

2.9 FINISH

Interior and exterior surfaces shall be uniform in appearance and free of foreign substance, shrink holes, cracks, blow holes webs and other superficial or structural defects that could adversely affect the appearance and performance of the container. The interior surface of the container shall be smooth.

3.0 RESIN WEIGHT

Resin must satisfy manufacturers original specification for first quality material. Resin weight without hardware shall be 14 lbs. for 32-gallon containers, 22 lbs. for 64-gallon containers, and 30 lbs. for 96-gallon containers.

3.1 The body of the container, the lid, and all parts other than the tires and axles shall be composed of high-density polyethylene or linear low density polyethylene. Minimum wall thickness for all areas of the body of the container must be no less than .150 inch for 64 and 96-gallon containers, and .118 inch for 32-gallon containers. Vendor shall state type of material used. Material used shall be 100% recyclable. Polyethylene resin shall contain an ultraviolet stabilizer compounded at a concentration of not less than .50% in the resin weight.

3.2 Resin shall contain color pigment at a concentration of 0.50% to 1.0% in the resin by weight. Color shall be non-fading throughout the warranty. The color and shade of containers shall be consistent and without noticeable variation from one to another.

3.3 All containers must be manufactured with a minimum of 15% post consumer recycled (PCR) or higher PCR content in conformance with proposed PCR content. All plastic materials used in the construction of the containers shall be recyclable into other polyethylene products of similar nature.

3.4 WEARABILITY

All parts of the container shall withstand excessive wear such that it is usable for the warranty period of ten (10) years in the intended application including resistance to bottom wear and permanent deformation from loading and unloading of solid waste. Contractor shall submit certified test results from ANSI Z245.30-1994 section 6.2.4.2.4. (durability during pulling) and 6.2.4.2.5 (loading and unloading: cycle test) upon request. It is to be understood that the container will be gripped by hydraulically operated equipment and will come in regular contact with asphalt, cement, and other rough surfaces. Should the container body fail during the warranty period, Contractor will provide to the City, at no cost to the City, a replacement container including a new lid. Subsequent failure of the replacement container shall not absolve Contractor of its obligation to replace, until a proper container is finally delivered. However, if the lid should fail, then only the lid shall be replaced.

3.5 DURABILITY

All containers shall remain durable in hot and cold temperature variations of this region under loading conditions as set forth in ANSI Z245.30-1994, section 6.2.4.1 load weight rating. In addition the container shall have a life expectancy of not less than ten (10) years during which

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time the container and its component parts shall maintain sufficient strength, shape and appearance, and to be resistant to blows, kicks and rodent penetration, such as to require no routine maintenance, in general be maintenance free.

3.6 WARRANTY CLAIM PROCEDURE

Any containers or components of containers that fail during the first 90-day warranty period shall be replaced by the Contractor.

Any containers or components of containers, that fail during the warranty period of ten (10) years shall be replaced by Contractor as specified in section 3.4 above. Contractor shall make available to the City spare parts and components to maintain the containers through the warranty period, although this will not preclude the City from requiring the Contractor to replace any defective parts. Warranty claims must be processed and completed by Contractor within 30 calendar days after being submitted by the City.

4.0 DELIVERY SCHEDULE

Deliveries will be accepted Monday through Friday. All deliveries must arrive at the specified location not later than 10 a.m. Advance notice (a minimum of twenty-four hours) prior to delivery is required. Please contact:

Mr. William Skinner, Integrated Solid Waste Collection Superintendent 916-808-4932
(Alternate number 916-997-1744)

4.1 Deliveries shall be made with minimum orders of 500 containers or a full truckload, and shall occur within thirty (30) calendar days after receipt of order.

4.2 Containers that require time and motion in excess of five (5) minutes to assemble such as lids, axles, and wheels must be assembled on arrival, or assembled at a designated staging area provided by the City. Contractor shall be responsible for any loss of container components stored at a City facility during assembly. Contractor is encouraged to secure components or containers assembled on site in a locked box.

5.0 IDENTIFICATION

A numbering system shall be developed that can trace each container back to an oven cycle (i.e., year, day, shift, and mold). Such numbering system shall appear on each container. Containers must be manufactured within three (3) months of delivery to the City as indicated by the numbering system on the container. Numbering identification information shall be provided to the City in Excel electronic format with each container delivery for information and warranty purposes.

5.1 All containers shall be identified with wording and arrows inscribed and molded in raised letters into the lid of the containers. (See Exhibit A – Attachment 3)

6.0 POST CONSUMER RESIN (PCR) CONTENT

6.1 **Definition.** Post consumer resin or materials shall be defined as a material or finished product that has served its intended end use and has been discarded for disposal or recovery having completed its life as a consumer item. No materials originated from any in-plant operations (i.e., industrial scrap) shall be considered as PCR content.

6.2 **Certification and documentation of PCR content.** The Contractor shall submit the following to the City during the period of any resulting contract:

- A. Contractor shall submit invoices and/or bills of lading showing the actual source and the purchase of PCR as well as the destination of shipments upon request by the City and attest to its use in the manufacturing of the containers at the percentage prescribed by the City or at the higher PCR percentages proposed by the Contractor.
- B. Documentation of post consumer resin usage must reflect the number of pounds used in manufacturing containers in order to facilitate audited compliance with the Contractor's proposed PCR content.
- C. Contractor shall submit an Amass flow report depicting the origin and the use of the PCR for every corresponding invoice.

6.3 **Remedies for non-compliance with PCR requirements.** Noncompliance with proposed PCR requirements at any time during the contract period shall constitute a material breach of the contract and the City shall have the right to terminate the contract.

6.4 **Right of the City to audit PCR content and manufacturing process.** The City reserves the right to audit or to request periodic audits by an independent company of the use of recycled materials in the production of the containers provided under this contract. Contractor shall be responsible for all costs related to two audits. Contractor shall be required to allow plant inspection visits by the City in conformance with the conditions outlined below:

- A. The Contractor shall pay all reasonable per diem for up to two plant inspections by the City and/or its independent contractor.
- B. Per diem shall include all reasonable transportation costs, lodging and meals for up to two persons.
- C. It is anticipated that a visit to the manufacturing facility would require between 1-3 days depending on location, transportation, distance and other factors.
- D. City requests for reimbursement shall not exceed accepted limits for per diem as defined by City policies and practices.

7.0 TESTING

7.1 The City of Sacramento reserves the right to perform, or have performed, such inspection and testing as considered necessary to assure the acceptability and suitability of the containers, lids, and hardware. The City of Sacramento may, at its option, have testing performed by an independent laboratory. The expense of these tests shall be borne by the City of Sacramento if material meets test standards. The expense of these tests shall be borne by the contractor if material does not meet test standards. The City of Sacramento will use ASTM standards for purposes of evaluating such tests or inspections. Tests or inspections performed under this reservation shall not be considered a waiver of any right or breach of warranty.

7.2 The City will test one of five hundred containers and/or lids delivered for conformance with the specifications in the agreement. If the container and/or lid fails to meet specifications, a second container and/or lid will be tested. If the second container and/or lid fails to meet specifications described in the agreement, the entire order will be rejected and replaced at no charge by the vendor. The City will pay for the tests unless the container and/or lid fails to meet specifications,

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in which case the vendor will pay for the test and replace all containers and/or lids in that delivery.

- 7.3 Should Contractor fail or refuse to provide the required reports, samples, and information required in these specifications, it shall be expressly understood and agreed this constitutes breach of contract. The City of Sacramento may withhold all payment due to Contractor and pursue any and all legal and equitable remedies.
- 7.4 It is further agreed that the City of Sacramento's review, concurrence or approval of Contractor's documentation or product shall in no way relieve the Contractor of its responsibilities to comply with the specifications nor shall it be construed as a waiver or abridgement of the City of Sacramento's legal remedies, rights, and powers.

EXHIBIT A – ATTACHMENT 3

WORDING AND LOGO

The following wording shall be molded or hot stamped on the top of the lid of all containers in raised letters. Wording shall be in English and Spanish.

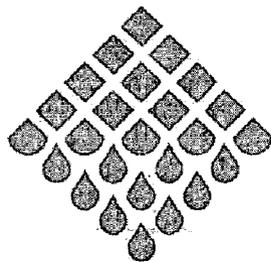
“NO SCAVENGING ALLOWED.”

The following wording shall be molded or hot stamped on the back under the handle of all containers in raised letters. Wording shall be in English and Spanish.

“KEEP OFF SIDEWALK AND OUT OF BIKE LANE”

A white font hot stamp of the logo represented below shall be molded or hot stamped on both sides of each refuse container in raised letters.

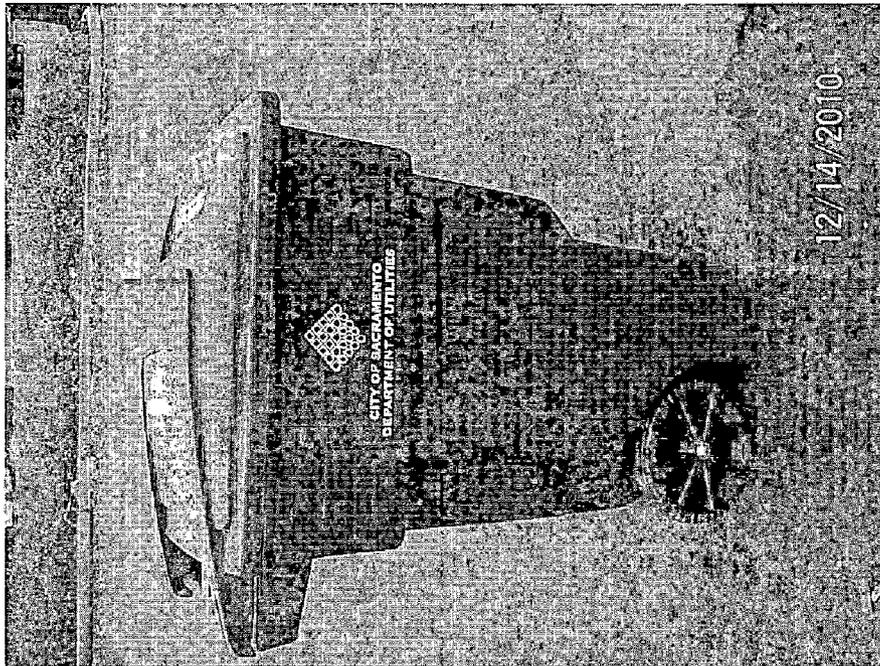
The logo represented below shall be molded or hot stamped on the left side of yard (green) waste and recycling container in raised letters (viewing from the front).



CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES
SOLID WASTE SERVICES

The hot stamp shall be a minimum of 5" in diameter or larger, if space permits.

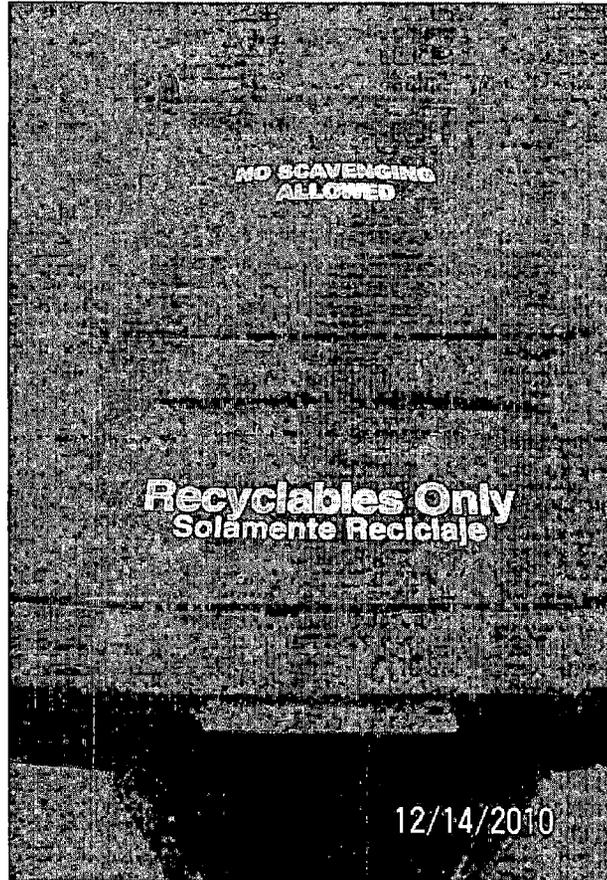
Exhibit A – Attachment 3 RECYCLE CONTAINER



All Text is Hot Stamped with a White Font (viewing from front of container

- Top - Recyclables Only Solamente Reciclaje
- Front - Tracking Number
- Right Side - Recycle logo
- Left Side - Dept. of Utilities logo

Exhibit A – Attachment 3 RECYCLE CONTAINER



Wording should be in English and Spanish

All Text is Hot Stamped with a White Font (viewing from front of container).

- Top - Garbage Only Solamente Basura
- Front - Tracking Number
- Sides - Dept. of Utilities logo
- Back - "KEEP OFF SIDEWALK AND OUT OF BIKE LANE" (See Exhibit A)

Exhibit A - Attachment 3 REFUSE CONTAINER

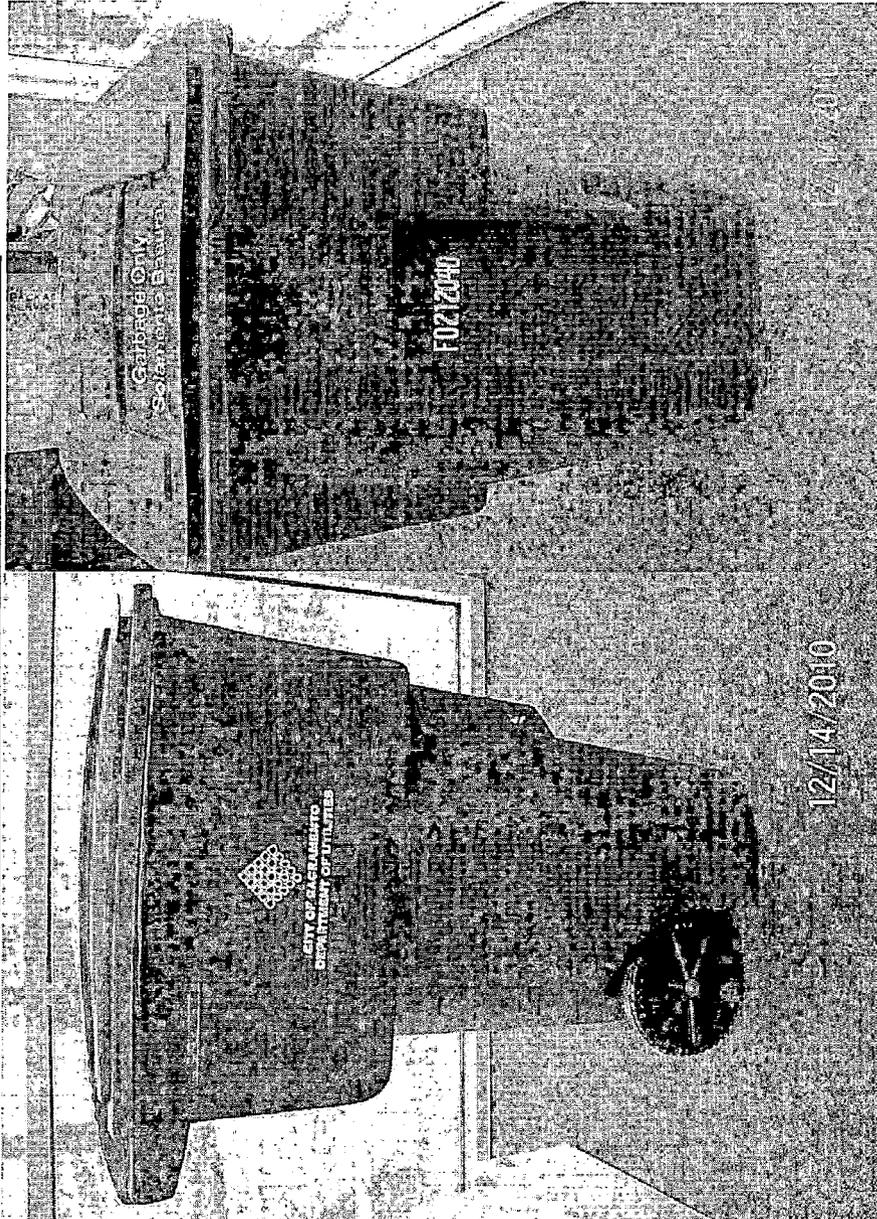


Exhibit A – Attachment 3 REFUSE CONTAINER



Wording should be in English and Spanish

Exhibit A – Attachment 3 YARD (GREEN) WASTE CONTAINER

All text is Hot Stamped with a White Font (Viewing from front of container)

- Top – “Yard Waste Only Desperdicios Del Jardin
Solamente
- Front - Tracking Number
- Right Side - English “City of Sacramento Yard Waste Program” with a picture
of a leaf

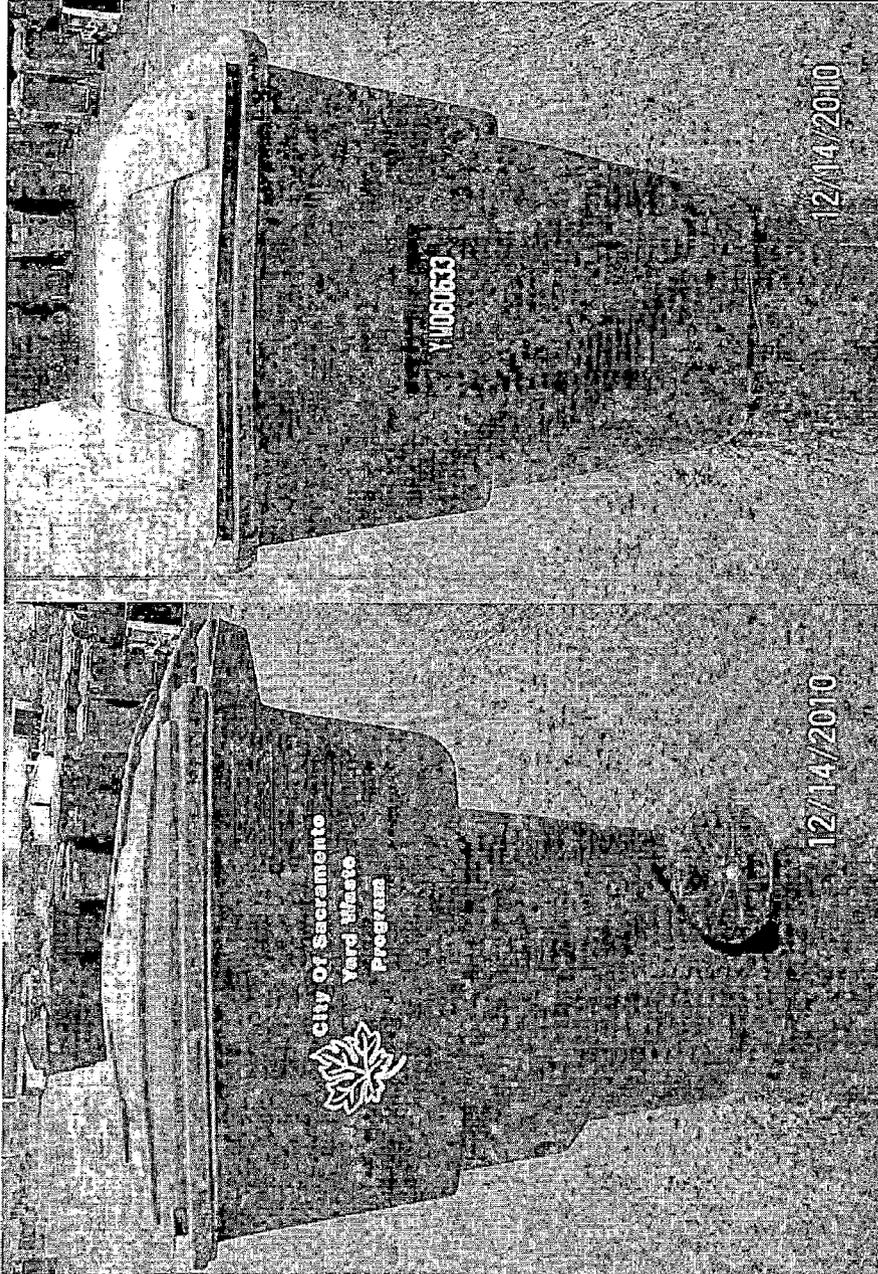


Exhibit A – Attachment 3 YARD (GREEN) WASTE CONTAINER



Lid should read "Yard Waste Only No Garbage Desperdicios Del Jardin
Solamente"

EXHIBIT B

COMMODITIES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the furnishing of all equipment set forth in Exhibit A and Attachment 1, 2 and 3 to Exhibit A, including normal revisions, and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$3,737,287.50.
2. **Billable Rates.** CONTRACTOR shall be paid as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein.
3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper furnishing of equipment and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made for the furnishing of equipment or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Description of equipment billed under this invoice, and overall status of project
 - (2) Date of Invoice Issuance
 - (3) Sequential Invoice Number
 - (4) CITY's Purchase Order Number
 - (5) Total Contract Amount
 - (6) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (7) Total Billed to Date
 - (8) Total Remaining on Contract
 - C. Items shall be separated into equipment furnished and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.
 - D. Requests for payment and invoices shall be sent to:

*Solid Waste Division
Attention: Accounts Payable
2812 Meadowview Road, Bldg. 1
Sacramento, CA 95832
916-808-4931 (phone) 916-808-4999 (fax)*

5. **Additional Equipment.** Additional equipment are those equipment or supplies related to the equipment of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Equipment shall be provided only when a Contract Supplement authorizing such Additional Equipment is approved by CITY in accordance with CITY's Contract Supplement procedures.
6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after furnishing of all equipment and Additional Equipment hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all e equipment and Additional Equipment furnished under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

EXHIBIT B – ATTACHMENT 1

PAYMENT TO CONTRACTOR

PRICING SCHEDULE

	Toter Incorporated	
96 gallon	\$	44.87
64 gallon	\$	37.87
32 gallon	\$	31.37
Discount Offered		2%

PRICE ADJUSTMENTS

The price schedule shall remain firm for the first year of the contract period. The price schedule for the remaining years of the contract, if renewed, shall be subject to adjustment only if increases occur in the industry. Such increases shall not exceed 5% per year or the latest yearly percentage (%) increase in the Producer Price Index (PPI) for plastics material and resins mfg. index (Series ID: pccu325211325211) as published by the Bureau of Labor Statistics, U.S. Department of Labor, whichever is less. The yearly increase or decrease in the PPI shall be the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the comparable month one year prior. Any requested cost increase shall be fully documented and submitted to the City at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the PPI of the industry costs decline, the City shall receive from the Contractor a reduction of costs in accordance with the terms and conditions for adjustments detailed above.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. If the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, City may terminate the contract as provided in Section 9 of Exhibit D.

PURCHASE ORDER

1. A Purchase Order will be issued to the Contractor on behalf of the City organization(s) who will be ordering items/services covered in the contract. The Purchase Order will be enclosed with the resulting contract or will be issued shortly thereafter, and will become an integral part of the resulting contract. Each Purchase Order will cite a specific dollar value to cover a particular item or specified period of time. If a contract is for a specific period of time and extends beyond the close of the City's fiscal year of June 30th, a second purchase order may be issued.
2. The Purchase Order does not supersede any provision of the resulting contract. Performance time and dates are determined solely by the contract, and any modification thereto.

3. Delivery of material and/or services are not to begin until receipt of the Purchase Order and/or other notification by the City.

4. All cash discounts, if taken, shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of vendor's invoice.

EXHIBIT C
COMMODITIES AGREEMENT
FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall *[check one]* Not furnish any facilities or equipment for this Agreement; or
 furnish the following facilities or equipment for the Agreement; *[list, if applicable]*

EXHIBIT D
COMMODITIES AGREEMENT
GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its furnishing of equipment hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or furnishing of equipment under this Agreement. (As used in this Exhibit D, the term "equipment" shall include both equipment and Additional Equipment as such terms is defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession, provide any services, or furnish any equipment under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession, provide an services,, or furnish any equipment. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time and effort to the performance pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright,

data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any performance by CONTRACTOR under this Agreement, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the

notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the work required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform the work pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease performing pursuant to this Agreement. If CITY terminates this Agreement:
 - (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of equipment furnished by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed furnishing of all equipment required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of

the equipped furnished by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the furnishing of equipment by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of

one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases

of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.
20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative

of the City of Sacramento for workmanship, appearance, proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance. Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.

21. Funding Availability.

- A. This Agreement is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
- B. The City's payment obligation under this Agreement shall not at any time exceed the amount of the funds appropriated and approved for such purpose by the Sacramento City Council.
- C. This Agreement shall terminate without penalty at the end of the fiscal year in the event funds to make payment under this Agreement are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Agreement shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject further, to the limitation in subsection 9. of these General Conditions.
- D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.

22. Inspection of Facilities. If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under this Agreement will be accomplished.

23. Material Safety Data Sheets (MSDS). It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.

24. Notification of Material Changes in Business. Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the this Agreement either for cause or for convenience as provided in Section 9 of these General Conditions.

25. **Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of this Agreement. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
26. **Guarantee.** The Contractor guarantees that all merchandise delivered and/or work or services performed under this Agreement shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not meet the minimum requirements of this Agreement, the Contractor shall be required to correct the same at Contractor's sole expense.
27. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
- A. **Use Tax Direct Payment Permit:** For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform this Agreement and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
 - B. **Sellers Permit:** For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, Contractor and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the City. Contractor and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the City.
 - C. The above provisions shall apply in all instances unless prohibited by the funding source for this Agreement.

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EXHIBIT E

COMMODITIES AGREEMENT

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street

construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Procurement Services Division, at the same address, containing the details of the alleged violation.

RESOLUTION NO. 2011-309

Adopted by the Sacramento City Council

May 31, 2011

REJECT BID, SUSPEND COMPETITIVE BIDDING AND AWARD CONTRACTS FOR PURCHASE OF REFUSE, RECYCLE, AND YARD (GREEN) WASTE CONTAINERS

BACKGROUND

- A. The City's current contract with Toter Incorporated for the purchase of refuse, recycle, and yard waste containers will expire on October 15, 2011. In order to ensure continuity of supply, the Solid Waste Division issued an Invitation for Bids (IFB) (B111711001) in February 2011.
- B. Six bids were received and all bids were found to be non-responsive for failing to meet certain specifications of the bid.
- C. Bids submitted by Cascade Engineering, IPL Inc., and Rehrig Pacific Company were deemed non-responsive because one or more of their size containers exceeded the maximum container volume (32, 64, and 96 gallons, plus or minus 1%) specified in the bid. The maximum volumes were specified because the volume directly relates to container sizes in the Council approved Solid Waste rate structure.
- D. Bids submitted by Otto Environmental Systems, LLC and Toter Incorporated were deemed non-responsive because their containers failed to meet the minimum wall thickness requirement specified in the bid. However, of the bids received, only Otto Environmental Systems, LLC and Toter Incorporated offered the container sizes the City described in the bid specifications and except for the wall thickness requirement, substantially meet the bid specifications.
- E. It is in the City's best interest to reject all bids, suspend further competitive bidding and enter into agreements with Otto Environmental Systems, LLC and Toter Incorporated for the purchase of refuse, recycling, and yard waste containers. Although Otto Environmental Systems, LLC and Toter Incorporated did not meet the wall thickness requirement, the alternative of using larger container sizes that do not match Council approved Solid Waste rates would result in higher costs. Staff has the ability to measure container wall thickness to randomly test containers as they are received from the vendor. If containers fail to meet the wall thickness requirement as they are tested, they will be rejected and the City may ask for new containers to be delivered or order containers from the other vendor. A dual award of the contract offers the City the benefit of an alternative vendor to use if the wall thickness requirement is not consistently met and will reduce delays in receiving orders.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1 All bids submitted for Bid No. B111171001 for the purchase of refuse, recycle, and yard (green) waste containers are rejected.
- Section 2 In the best interest of the City, competitive bidding is suspended for the purchase of refuse, recycle, and yard (green) waste containers.
- Section 3 The City Manager, or his designee, is authorized to execute an agreement with Otto Environmental Systems, LLC, attached as Exhibit A, for the purchase of refuse, recycle, and yard (green) waste containers for a five year amount not to exceed \$11,514,423.75.
- Section 4 The City Manager or his designee is authorized to execute an agreement with Toter Incorporated, attached as Exhibit B, for the purchase of refuse, recycle, and yard (green) waste containers for a five year amount not to exceed \$3,838,141.25.
- Section 5 The agreements with Otto Environmental Systems, LLC and Toter Incorporated provide for an initial term of one year, with the option to extend for additional one year terms, up to a total agreement term of five years (including the initial term and all extensions). The City Manager or his designee may authorize such extension(s) for the five year not to exceed amounts specified above, provided that sufficient Solid Waste funds (Fund 6007) are available in the budget adopted for the applicable Fiscal Year(s). The total amount for both contracts for the five year contract period will not exceed \$15,352,565.00.

Table of Contents:

- Exhibit A: Commodities Agreement with Otto Environmental Systems, LLC
- Exhibit B: Commodities Agreement with Toter Incorporated

Adopted by the City of Sacramento City Council on May 31, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.

Attest:

Mayor Kevin Johnson

Shirley Concolino, City Clerk

Adopted by the City of Sacramento City Council on May 31, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

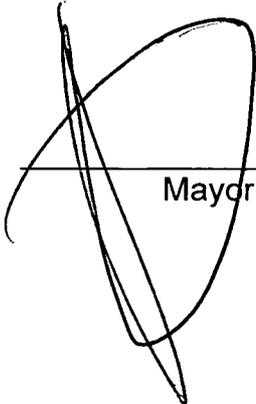
Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk


Mayor Kevin Johnson